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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 2

E. PAT KELLY, AS DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON; JAY OLINGER, AS SUPERVISOR OF THE SAFETY DIVISION OF SAID DEPARTMENT, AND HOWELL PARKER, AS DEPUTY DIRECTOR UNDER THE TITLE MARINE INSPECTOR, PETITIONERS

v.

STATE OF WASHINGTON ON THE RELATION OF FOSS COMPANY, INC., A CORPORATION; ALLMAN-HUBBLE TUGBOAT COMPANY, INC., A CORPORATION; BELLINGHAM TUG & BARGE CO., INC., A CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MEMORANDUM OF THE UNITED STATES AMICUS CURIAE

This case was assigned for reargument, with direction to the Clerk to give notice to the Attorney General of the United States, who was requested to present the views of the Government upon the question whether Chapter 200 of the Laws of 1907

of the State of Washington or the action of the officers of the State thereunder conflicts with the authority of the United States or with the action of its officers under the Acts of Congress. This memorandum is submitted in response to that request.

STATUTES AND REGULATIONS INVOLVED

The applicable portions of the Federal statutes and regulations involved are set forth in the Appendix, *infra,* pp. 14–26.

STATEMENT

The respondents here own and operate 139 motor-driven tugs, of which 111 are less than 65 feet in length. Some are registered and the remainder are enrolled and licensed under Federal Laws (R. 140).[1] Some of them tow to and from Washington ports and ports of British Columbia, Oregon, and California (R. 140, 141). They operate mostly upon the inland navigable waters of the United States within the State of Washington, moving vessels engaged in interstate and foreign commerce and engaging in other work about the harbors where they are stationed; but some of them go upon the high seas, and practically all of them are capable of engaging in interstate or foreign commerce, and will do so if and when opportunity offers (R. 141, 143).

[1] From Report No. 1321 of the House Committee on Merchant Marine on S. 2001, 74th Congress, First Session, it appears that there are 772 vessels of 819,935 tons of the motor-driven class in the United States.

The application for writ of prohibition filed by the owners of these motor tugboats in the State Court seeks to restrain the enforcement against such vessels of Chapter 200 of the Laws of 1907 of the State of Washington which contains a comprehensive code for the inspection of every vessel operated by machinery which is not subject to inspection under the laws of the United States (R. 22, 141). The State authorities concede that they have no authority to enforce on *all* waters within the territorial boundaries of the State *all* of the provisions of the State Act of 1907 (such as those pertaining to the rules of the road), but do propose to require the owners of these motor-driven tugs to comply with those laws of the State in the following particulars (R. 141, 142):

> (a) Submit such vessels to inspection annually or oftener if the director shall deem it reasonable, at a cost to said owners of not less than five nor more than twenty dollars for each inspection.
>
> (b) Make such changes, repairs, and improvements as said director may thereupon require.
>
> (c) Carry such officers on said vessels as the director shall after examination license as masters, pilots, and engineers.
>
> (d) Carry such crews as he shall deem necessary to manage each vessel with safety.
>
> (e) Carry such life saving equipment as he shall require and approve.
>
> (f) Carry such fire prevention apparatus as he shall require and approve.

(g) Keep on board at all times a copy of the license to be issued by the director authorizing the vessels to navigate in and upon the waters within the territorial limits of the state, the same to be posted in a conspicuous place.

(h) Keep a copy of the first twenty-two sections of the act posted in a conspicuous place on said vessel.

(i) Keep two copies of the navigation rules set out in section 8 of the act posted in the vessel, one in the pilot house, the other in a conspicuous place.

(j) Keep the vessel's name painted on her stern in the character and colors prescribed by section 16 of the act.

(k) Comply with all orders regulations, and requirements of the Commissioner (Sec. 25).

It was the position of the State that, as the Federal Government had not passed legislation specifically requiring annual inspection of these motor tugs or provided for the licensing of persons in charge thereof, the Federal Government could not be said to have completely occupied the field and that the State, therefore, could properly legislate upon such matters not expressly provided for by the Federal laws.

The Superior Court of the State dismissed the application for the writ (R. 137). The Supreme Court of the State, by a majority opinion, reversed (R. 140–146). The opinion states that "in the twenty-nine years since its enactment no real at-

tempt has been made to enforce it [the act] against those operating vessels of any kind upon the navigable waters of the United States until the present controversy arose" (R. 146).

ARGUMENT

As found by the Supreme Court of Washington, some of the vessels involved in the case at bar operate in foreign and interstate commerce, and practically all can and will do so when opportunity offers, though the main business of most of them is confined to towing vessels which themselves move in interstate and foreign commerce. It may be observed at the outset that the reach of Federal power extends alike to vessels engaged in any of these pursuits. As the Court stated in *Foster* v. *Davenport,* 22 How. 244, 246:

> It is quite apparent from the facts admitted in the case, that this steamboat was employed in aid of vessels engaged in the foreign or coastwise trade and commerce of the United States, either in the delivery of their cargoes, or in towing the vessels themselves to the port of Mobile. The character of the navigation and business in which it was employed cannot be distinguished from that in which the vessels it towed or unloaded were engaged. The lightering or towing was but the prolongation of the voyage of the vessels assisted to their port of destination. The case, therefore, is not distinguishable in principle from the one above referred to.

This doctrine was reaffirmed in *Moran* v. *New Orleans,* 112 U. S. 69, 73, and *Harman* v. *Chicago,* 147 U. S. 396, 406.

It is the position of the United States that the state legislation as here construed and proposed to be applied is in conflict with the authority of Congress as presently exercised.

The state authorities propose to subject respondents' motor-driven tugs to the requirements of state law as to inspection of vessels, repairs, licensing and number of personnel, life-saving equipment, fire-prevention apparatus, posting of the vessel's license and copies of the state act and regulations, display of the vessel's name, and, generally, to the regulations and requirements of the state commissioner.

Congressional legislation with respect to vessels on the navigable waters of the United States is comprehensive. With respect to steam vessels the provisions of Federal law are extremely detailed.[2]

[2] The Acts of Congress, providing a complete system for the inspection and manning of steam vessels (and substantially covering the same field as Chapter 200 of the Washington Laws of 1907), appeared as Title LII of the Revised Statutes, Sections 4399–4462, and as amended have been carried over into the Code (U. S. C., Title 46, Sections 361–416; c. 61, 48 Stat. 125).

They provide in detail for the complete inspection of hulls and machinery (*id.*, Secs. 391, 392); the issuance of certificates of inspection to be carried aboard the vessels (*id.*, Secs. 399, 404, 405); the licensing of officers (*id.*, Secs. 222, 223); designation of crews to be carried (*id.*, Sec. 222), with number of able seamen and certificated lifeboat men required (*id.*, Sec. 222), as well as the full complement of the crew

The provisions as to inspection of steam vessels have recently been made applicable to sea-going motor vessels of 300 gross tons and over, except vessels engaged in the fishing industry (Act of June 20, 1936, c. 628, 49 Stat. 1544, *infra*, p. 21). Federal legislation regulating other motor driven boats is less stringent with respect to inspection, but its provisions plainly reveal that Congress has addressed itself to the problem of regulation of such vessels and has legislated to the extent deemed necessary in the interest of the public and of the owners and crew.

The Motor Boat Act of 1910 (*infra*, p. 15), together with the regulations of the Secretary of Commerce issued pursuant thereto (*infra*, p. 22) contains the principal, though not the only, applicable provisions. A motor boat is defined in the Act as including every vessel propelled by machinery and not more than 65 feet in length, except tug boats and tow boats propelled by steam. As will

(*id.*, Sec. 222); regulation of the number of passengers to be carried (*id.*, Secs. 451, 452); provision for the carriage of dangerous cargoes (*id.*, Secs. 465–468); precautions against fire to be observed by vessels carrying passengers and freight (*id.*, Sec. 463); and additional provision for the transportation of explosives and dangerous substances (*id.*, supp. 391–a). Acts of Congress also provide a complete set of rules of the road—lights to be carried, etc.—governing navigation upon the navigable waters here concerned (U. S. C., Title 33, Sections 154–232). Every documented vessel is required to have her name marked on each bow and upon the stern, with the name of her home port (U. S. C., Title 46, Sec. 46). Penalties are provided for non-compliance with the various provisions.

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appear, however, several important provisions are made applicable also to motor vessels of more than 65 feet in length. All motor boats of 5 net tons or over engaged in trade must be documented—that is, licensed by the Collector of Customs (Regulation 16, p. 26, *infra*). As stated by the Supreme Court of Washington, all the vessels involved in the case at bar are in fact registered or enrolled and licensed under Federal laws (R. 140).[3] All motor boats as defined in the Act, as well as all other motor boats propelled otherwise than by steam, whether under or over 65 feet in length, which are of over 15 gross tons and which carry passengers or freight for hire, excepting those engaged in fishing as a regular business, are subject to inspection (R. S. 4426, as amended, p. 19, *infra;* Regulation 15, p. 26, *infra*). The difference thus drawn, with respect to inspection, between carriers for hire and other motor vessels, is drawn also with respect to licensing of personnel. Motor boats carrying passengers for hire must carry, as the officer in charge, a person licensed for such service by the local Federal Board of Inspectors (Section 5 of the Act of 1910, p. 17, *infra*). The Act specifically provides, however, that "motor boats shall not be required to carry licensed officers, except as required in this Act" (*ibid.*). Thus the motor tugs here involved are relieved of the necessity of carrying a licensed

[3] The distinction between registry and enrollment is discussed in *Anderson* v. *Pacific Coast Steamship Company*, 225 U. S. 187, 199.

operator. The exemption is specific and constitutes an affirmative Federal rule.[4]

The Act and Regulations make definite provision for life-saving and fire-extinguishing equipment and describe the approved types (Sections 5 and 6, pp. 17, 18, *infra;* Regulations 13–14, pp. 23–25, *infra*). It is to be noted that these provisions apply to motor driven vessels whether more or less than 65 feet in length. While the requirements as to life-saving equipment imposed by the statute (Section 5) and the Regulations (No. 13) differ as to motor boats carrying passengers for hire and those not so engaged, in either case the requirements are definitely fixed. The regulations also require motor boats to have on board two copies of the pilot rules to be observed by them, which will be furnished by the Collectors of Customs and local inspectors, Bureau of Marine Inspection and Navigation; copies of the Act and Regulations are to be inserted therein (Regulations 17, p. 26, *infra*). All documented vessels of the United States (including all involved in the present case) must be marked with their name and the home port in specified lettering (R. S., Sec. 4178, p. 20, *infra*).

[4] Neither in the Committee Reports on the Motor Boat Act of 1910 (Senate Committee Report No. 587; House Reports Nos. 1162, 1430, 61st Congress, Second Session) nor in the debates was reference made to state regulation. The discussion was devoted to the broad question of the extent to which regulations respecting safety equipment and personnel might appropriately be imposed upon motor boats. 45 Cong. Rec., 5404–5405, 5687–5691, 6358–6359.

It must be evident that Federal regulation of motor vessels is a carefully articulated system, and that to the extent that it does not parallel the regulation of steam vessels, the differences reflect the deliberate policy of Congress.[5] It must also be evident, we believe, that the state regulations here sought to be applied invade a field already occupied by Federal authority.

Principles long established by this Court require that the state regulations be held inoperative in the

[5] The Senate, by its passage on August 14, 1937, of S. 2580, has indicated its view that now every existing vessel documented under the laws of the United States should be inspected. The bill would amend existing laws so as to promote safety at sea by requiring proper design, construction, maintenance, inspection, and operation of ships. It defines a ship or a vessel as including "every description of watercraft or other artificial contrivance, except aircraft, used, or capable of being used, as a means of transportation on water, whether or not it is actually afloat." (Sec. 301.) All vessels documented under the laws of the United States are divided into five groups, one of which includes vessels navigating bays, sounds, and protected waters, and the Bureau of Marine Inspection and Navigation is authorized to subdivide each group in accordance with types of ships. Among the subgroups provided for is "towing vessel" (Sec. 401 (a) (4), Sec. 402). Every existing vessel documented under the laws of the United States (which would include respondents' tugboats) would be subject to a periodical inspection by the Bureau to be made at least once every year and to additional inspections to be made whenever necessary (Sec. 602).

S. 2580 was referred on August 17, 1937, to the Committee on Merchant Marine and Fisheries in the House of Representatives, but was not reported out by that Committee before the adjournment of the Congress on August 21, 1937.

case at bar. The Federal and state regulations alike cover the licensing and manning of motor vessels, and the type and fitness of their safety equipment. The regulations operate upon the same subject and they have the same object. The situation is thus comparable to that under the Federal safety appliance laws as described in *Southern Ry. Co.* v. *Railroad Commission,* 236 U. S. 439, 446–447:

> But so far as it did legislate, the exclusive effect of the Safety Appliance Act did not relate merely to details of the statute and the penalties it imposed, but extended to the whole subject of equipping cars with appliances intended for the protection of employes. The States thereafter could not legislate so as to require greater or less or different equipment; nor could they punish by imposing greater or less or different penalties. For, as said in *Prigg* v. *Commonwealth,* 16 Pet. 539, 617: "If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislatures have a right to interfere; and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any farther legislation to act upon the subject-matter. Its silence as to what it does not do, is as expressive of what

> its intention is as the direct provisions made by it * * * the will of Congress upon the whole subject is as clearly established by what it had not declared, as by what it has expressed."

In the circumstances here disclosed the state law can not be given effect, "however commendable" its aims (*Napier* v. *Atlantic Coast Line,* 272 U. S. 605, 613), and whether its operation would be "consistent, complementary, additional or otherwise" in relation to the Federal regulations (*Gilvary* v. *Cuyahoga Valley Ry.,* 292 U. S. 57, 60–61).

The case is not governed by decisions dealing with local harbor regulations, port pilotage, quarantine, and the like, which may be proper subjects of local regulation where they do not burden interstate commerce and where they do not deal with matters which have been made the subject of Federal regulation. Cf. *Clyde Mallory Lines* v. *Alabama,* 296 U. S. 261, 267; *Covington & Bridge Co.* v. *Kentucky,* 154 U. S. 204, 211. In the first place, the state law here in question is not confined in its application to harbor traffic, but, under the construction urged by petitioners here, is applicable to motor vessels as such on all navigable waters within the State. And in the second place, in any event, Congressional legislation has dealt with the same subject and is paramount.

The Department of Commerce, in which is lodged the administration of the Federal inspection laws, advises that from time to time cases have arisen

wherein States have attempted to enforce their own inspection laws,[6] concurrently with the enforcement of the Federal laws, upon vessels employed on the navigable waters of the United States, and that in all such cases the Department has insisted that the Federal authorities have exclusive jurisdiction. It considers the opinion of the Supreme Court of Washington in this case sound, and its firm position is that the United States has exclusive jurisdiction, in the particulars here concerned, over motor tugs operating on the navigable waters of the United States in the State of Washington. It is submitted that this position is correct. Otherwise the States or municipalities or other subdivisions of the States may provide independent inspection laws, with varying requirements, leading to subversive conflict, duplication and confusion.

It is significant that before Chapter 200 of the Washington Laws of 1907 became effective, the Attorney General of the State ruled that it should be construed to apply only to vessels operating upon the inland lakes and rivers of the State of Washington (Respondent's Brief 31); and that it was not until 1934 that the State attempted to enforce it upon navigable waters of the United States (*id.*, Appendix A).

[6] Revised Code of Montana, Ann., 1935, Secs. 3859–3879; Municipal Ordinances No. 20 of the City of Avalon, California, passed Jan. 9, 1914; Inspection Laws of the State of New York, McKinney's Cons. Laws of New York, Ann., Vol. 36, pp. 11–38.

CONCLUSION

It is respectfully submitted that the decree of the Supreme Court of Washington should be affirmed.

STANLEY REED,
Solicitor General.
GOLDEN W. BELL,
Assistant Solicitor General.
SAM E. WHITAKER,
Assistant Attorney General.
J. FRANK STALEY,
Attorney.

SEPTEMBER 1937.

APPENDIX

The Motorboat Act of June 9, 1910, c. 268, 36 Stat. 462–463 (U. S. C., Title 46, Sections 511–518) provides:

That the words "motor boat" where used in this Act shall include every vessel propelled by machinery and not more than sixty-five feet in length, except tugboats and towboats propelled by steam. The length shall be measured from end to end over the deck, excluding sheer: *Provided,* That the engine, boiler, or other operating machinery shall be subject to inspection by the local inspectors of steam vessels, and to their approval of the design thereof, on all said motor boats, which are more than forty feet in length, and which are propelled by machinery driven by steam.

SECTION 2. That motor boats subject to the provisions of this Act shall be divided into classes as follows:

Class 1. Less than twenty-six feet in length.

Class 2. Twenty-six feet or over and less than forty feet in length.

Class 3. Forty feet or over and not more than sixty-five feet in length.

SECTION 3. That every motor boat in all weathers from sunset to sunrise shall carry the following lights, and during such time no other lights which may be mistaken for those prescribed shall be exhibited.

(a) Every motor boat of class 1 shall carry the following lights:

First. A white light aft to show all around the horizon.

Second. A combined lantern in the forepart of the vessel and lower than the white light aft showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(b) Every motor boat of classes 2 and 3 shall carry the following lights:

First. A bright white light in the forepart of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side. The glass or lens shall be of not less than the following dimensions:

Class 2. Nineteen square inches.

Class 3. Thirty-one square inches.

Second. A white light aft to show all around the horizon.

Third. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The glasses or lenses in the said side lights shall be of not less than the following dimensions on motor boats of—

Class 2. Sixteen square inches.

Class 3. Twenty-five square inches.

On and after July 1, 1911, all glasses or lenses prescribed by paragraph (b) of section three shall be fresnel or fluted. The said lights shall be fitted with inboard screens of sufficient height and so set as to prevent these lights from being seen across the bow and shall be of not less than the following dimensions on motor boats of—

Class 2. Eighteen inches long.

Class 3. Twenty-four inches long: *Provided,* That motor boats as defined in this Act, when propelled by sail and machinery or under sail alone, shall carry the colored lights suitably screened but not the white lights prescribed by this section.

SECTION 4. (a) Every motor boat under the provisions of this Act shall be provided with a whistle or other sound-producing mechanical appliance capable of producing a blast of two seconds or more in duration, and in the case of such boats so provided a blast of at least two seconds shall be deemed a prolonged blast within the meaning of the law.

(b) Every motor boat of class 2 or 3 shall carry an efficient fog horn.

(c) Every motor boat of class 2 or 3 shall be provided with an efficient bell, which shall be not less than eight inches across the mouth on board of vessels of class 3.

SECTION 5. That every motor boat subject to any of the provisions of this Act, and also all vessels propelled by machinery other than by steam more than sixty-five feet in length, shall carry either life preservers or life belts, or buoyant cushions, or ring buoys or other device, to be prescribed by the Secretary of Commerce, sufficient to sustain afloat every person on board and so placed as to be readily accessible. All motor boats

carrying passengers for hire shall carry one life preserver of the sort prescribed by the regulations of the Board of Supervising Inspectors for every passenger carried, and no such boat while so carrying passengers for hire shall be operated or navigated except in charge of a person duly licensed for such service by the local board of inspectors. No examination shall be required as the condition of obtaining such a license, and any such license shall be revoked or suspended by the local board of inspectors for misconduct, gross negligence, recklessness in navigation, intemperance, or violation of law on the part of the holder, and if revoked the person holding such license shall be incapable of obtaining another such license for one year from the date of revocation: *Provided,* That motor boats shall not be required to carry licensed officers, except as required in this Act.

SECTION 6. That every motor boat and also every vessel propelled by machinery other than by steam, more than sixty-five feet in length, shall carry ready for immediate use the means of promptly and effectually extinguishing burning gasoline.

SECTION 7. That a fine not exceeding $100 may be imposed for any violation of this Act. The motor boat shall be liable for the said penalty and may be seized and proceeded against, by way of libel, in the district court of the United States for any district within which such vessel may be found.

SECTION 8. That the Secretary of Commerce shall make such regulations as may be necessary to secure the proper execution of this Act by collectors of customs or other officers of the Government. And the Secretary of the Department of Commerce

may, upon application therefor, remit or mitigate any fine, penalty, or forfeiture relating to motor boats except for failure to observe the provisions of section 6 of this Act.

* * * * *

R. S. 4426, as amended (U. S. C., Title 46, Section 404), provides:

The hull and boilers of every ferry-boat, canal boat, yacht, or other small craft of like character propelled by steam, shall be inspected under the provisions of this chapter. Such other provisions of law for the better security of life as may be applicable to such vessels shall, by the regulations of the board of supervising inspectors, also be required to be complied with before a certificate of inspection shall be granted, and no such vessel shall be navigated without a licensed engineer and a licensed pilot: *Provided, however,* That in open steam launches of ten gross tons and under, one person, if duly qualified, may serve in the double capacity of pilot and engineer. All vessels of above fifteen gross tons carrying freight or passengers for hire, but not engaged in fishing as a regular business, propelled by gas, fluid, naphtha, or electric motors, shall be subject to all the provisions of this section relating to the inspection of hulls and boilers and requiring engineers and pilots, and for any violation of the provisions of this or the following chapter or sections 214, 216, or 222 applicable to such vessels, or of rules or regulations lawfully established thereunder, and to the extent to which such provisions of law and regulations are so applicable, the said vessels, their masters, officers, and owners shall be subject to the provisions of sections 494 to 498, inclusive, relating to the imposi-

tion and enforcement of penalties and the enforcement of law. All vessels of fifteen gross tons or less propelled in whole or in part by gas, gasoline, petroleum, naphtha, fluid, or electricity and carrying passengers for hire, shall carry one life preserver, of the sort prescribed by the regulations of the board of supervising inspectors, for every passenger carried, and no such boat while so carrying passengers shall be operated or navigated except in charge of a person duly licensed for such service by the local board of inspectors. No examination shall be required as a condition of the obtaining of such a license, and any such license shall be revoked or suspended by the local board of inspectors for misconduct, gross negligence, recklessness in navigation, intemperance, or violation of law on the part of the holder, and if revoked, the person holding such license shall be incapable of obtaining another such license for one year from the date of revocation.

R. S., Sec. 4178, as amended (U. S. C., Title 46, Section 46) provides:

The name of every documented vessel of the United States shall be marked upon each bow and upon the stern, and the home port shall also be marked upon the stern. These names shall be painted or gilded, or consist of cut or carved or cast roman letters in light colors on a dark ground, or in a dark color on a light ground, secured in place, and to be distinctly visible. The smallest letters used shall not be less in size than four inches. If any such vessel shall be found without these names being so marked the owner or owners shall be liable to a penalty of $10 for each name omitted.

The Act of June 20, 1936, c. 628, 49 Stat. 1544, provides:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That existing laws covering the inspections of steam vessels be, and they are hereby, made applicable to seagoing vessels of three hundred gross tons and over propelled in whole or in part by internal-combustion engines to such extent and upon such conditions as may be required by the regulations of the Board of Supervising Inspectors of Steam Vessels, with the approval of the Secretary of Commerce: *Provided,* That this Act shall not apply to any vessel engaged in fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industry: *Provided further,* That as to licenses required for masters and engineers operating vessels propelled by internal-combustion engines operating exclusively in the district covering the Hawaiian Islands, said masters and engineers shall be under the jurisdiction of the hull and boiler inspectors having jurisdiction over said waters, who shall make diligent inquiry as to the character, merits, and qualifications, and knowledge and skill of any master or engineer applying for a license. If the said inspectors shall be satisfied from personal examination of the applicant and from other proof submitted that the applicant possesses the requisite character, merits, qualifications, knowledge, and skill, and is trustworthy and faithful, they shall grant him a license for the term of five years to operate such vessel under the limits prescribed in the license.

Sec. 2. The term "seagoing vessels" as used in the preceding section shall be construed to mean vessels which in the usual course of their employment proceed outside the line dividing the inland waters from the high seas as designated and determined under the provisions of section 2 of the Act of February 19, 1895.

Regulations of the Secretary of Commerce, as revised December 1, 1936, issued pursuant to Section 8 of the Motor Boat Act of June 9, 1910 (published in Federal Register, Dec. 1, 1936, Vol. I, p. 2055), provide in pertinent part as follows:

REGULATIONS

1. All violations of the above act detected by enforcement officers other than collectors of customs must be reported directly to the Department of Commerce (Bureau of Marine Inspection and Navigation) regardless of mitigating circumstances, as authority to mitigate and remit the penalties under the laws mentioned is vested solely in the Secretary of Commerce. Such reports must be forwarded to the Bureau of Marine Inspection and Navigation in triplicate. The use of the report forms heretofore used in making such reports to collectors of customs is authorized.

2. The act defines the words "motor boat" (i. e., the class of vessels subject to its requirements) as including every vessel propelled by machinery and not more than 65 feet in length, except tugboats and towboats propelled by steam. The term, therefore, includes boats temporarily or permanently equipped with detachable motors, and such vessels, when so equipped, are subject to this act.

LIGHTS

* * * * *

WHISTLE, FOG HORN, AND BELL

* * * * *

LIFE PRESERVERS AND LIFE-SAVING DEVICES

ON MOTOR BOATS NOT CARRYING PASSENGERS FOR HIRE

13. Every motor boat not carrying passengers for hire must have life preservers or life belts, or buoyant cushions, or ring buoys, or other devices in sufficient numbers to provide one for each person on board. This includes members of the crew, children, and babies. No such life preserver, life belt, buoyant cushion, ring buoy, or other device is approved for more than one person each.

The Department authorizes life preservers, life belts, buoyant cushions, and ring buoys for motor boats not carrying passengers for hire under the following conditions: Each such device shall be capable of sustaining afloat for a continuous period of 24 hours an attached weight so arranged that whether the said weight is submerged or not there shall be a direct downward gravitational pull upon such device of at least 20 pounds. Each such device must either be approved by the Board of Supervising Inspectors, or it must have attached a tag on which is stated the name and address of the manufacturer, the weight and contents of the device, and that it complies with the requirements of section 5 of the act of June 9, 1910, for motor boats not carrying passengers for hire. Every such device must have at least two strong straps securely attached to it in such a manner that they will not break or be torn loose under ordinary conditions, of sufficient length and so arranged that they may be

slipped over the arms of the wearer to the shoulders.

No such life preservers, life belts, buoyant cushions, ring buoys, or other device stuffed or filled with granulated cork or other loose granulated material, and no pneumatic life preservers, life belts, buoyant cushions, ring buoys, or other device will be approved.

Planks, gratings, flooring, oars, corks on fish nets, empty kegs or casks, wooden boxes, boats in tow, etc., are not approved as substitutes for life preservers, life belts, buoyant cushions, ring buoys, but wooden life floats made of light buoyant wood may be used on motor boats navigating not more than three miles offshore and not carrying passengers for hire. The dimensions of every such wooden life float shall be not less than 4 feet in length, 12 inches in width, and 1¾ inches in thickness, and the weight shall not exceed 25 pounds. The float may be made in one or two pieces. If made in two pieces, they shall be securely attached together with wooden dowels. No metal shall be used in the construction of the float. It shall be provided with two hand-holes, one at each side, midway in the length, which hand-holes shall be not less than 6 inches in length and 2 inches in width, with a margin of at least 1 inch at the edge of the float. Wooden life floats, made of balsa wood shall not be less than 3 feet in length, 11½ inches in width, and 2 inches in thickness. The balsa wood used in the construction of such floats shall be of the same quality as required for the balsa wood life preservers. Each two-piece float, in addition to the doweling, shall be securely glued and the dowels shall be four in number of ¾-inch diameter, made of straight-grained dry hardwood, driven through and entirely across the float

through holes bored to slightly less diameter than the dowel. Life floats already installed on motor boats and constructed in accordance with previous regulations may continue to be used.

ON MOTOR BOATS CARRYING PASSENGERS FOR HIRE

Motor boats carrying passengers for hire shall carry one life preserver of the sort prescribed by the Board of Supervising Inspectors for every passenger carried, and the person in charge must be duly licensed.

Motor boats hired at launch liveries and operated by the liveryman or his employee are construed as carrying passengers for hire; but if the motor boat is operated by the hirer himself, it is not considered a carriage of passengers for hire even though he may take other persons on board, provided, of course, he does not receive compensation for carrying these other persons.

FIRE-EXTINGUISHING APPARATUS

14. Fire extinguishers of a type which have demonstrated their ability to "promptly and effectually extinguish burning gasoline" must be carried on all motor boats when being navigated. Extinguishers of the carbon dioxide, carbon tetrachloride, and foam types have demonstrated their capacity for promptly and effectually extinguishing burning gasoline. Extinguishers of any of these types which are full and in working condition, and which are of sufficient size to be effective, may be considered as being in compliance with the law. Neither soda and acid type extinguishers, sand, nor salt and sand, have been found to be capable of promptly and effectually extinguishing burning gasoline.

LICENSED OFFICERS, AND INSPECTION

15. In lieu of the inspection of steam vessels now provided by sections 4417, 4418, and 4426, Revised Statutes, it is now required that, after due inspection or personal observation, the design of the engine, boiler, or other operating machinery of motor boats more than 40 feet in length and not more than 65 feet in length, propelled by machinery driven by steam, shall be approved by the local inspectors.

All steam vessels more than 65 feet in length are subject to inspection as heretofore.

Motor boats propelled otherwise than by steam of above 15 gross tons carrying freight or passengers for hire, but not engaged in fishing as a regular business, are subject to inspection whether under or over 65 feet in length.

The only officer required to be carried on motor boats within the contemplation of the act of June 9, 1910, is the licensed operator provided for in the act.

DOCUMENTS AND NAME

16. All motor boats of 16 gross tons or over used exclusively for pleasure should be documented as yachts; all motor boats of 5 net tons or over engaged in trade must be documented—i. e., licensed by the Collectors of Customs. Vessels under 5 net tons are not registered, enrolled, or licensed in any case. The license of the vessel (designated a document) obtained from the Collector of Customs is additional to and must not be confounded with the license required for the operator of a motor boat.

17. Motor boats are required to have on board two copies of the pilot rules to be

observed by them, which will be furnished by the Collectors of Customs and Local Inspectors, Bureau of Marine Inspection and Navigation, on request. Copies of this circular should be inserted therein.

U. S. GOVERNMENT PRINTING OFFICE: 1937

No. 2

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1937

R. PAT KELLY et al, Petitioners

v.

STATE OF WASHINGTON et al, Respondents

MEMORANDUM OF RESPONDENTS RE FEDERAL INSPECTION OF VESSELS.

GENERAL

A. All vessels, regardless of tonnage, size, or manner of propulsion, and whether self propelled or not, and whether carrying freight or passengers for hire or not that shall have on board any inflammable or combustible liquid cargo in bulk, except public vessels owned by the United States, other than those engaged in commercial service, shall be considered steam vessels, and are subject to the provisions of Title 52 of the Revised Statutes. (Title 46 U.S.C., Sec. 391a).

B. All vessels, regardless of size or rig, transporting inflammable explosive or like dangerous cargo are subject to inspection to determine that such cargo may be carried with safety. (49 Stat. 868)

1. Steam vessels subject to all the inspection laws of Title 52.

   (a) All steam vessels of 65' in length and over.

   (b) Tugboats and Towboats propelled by steam regardless of size or tonnage.

   (c) Vessels described in general heading paragraph A and B.

2. Steam vessels which are subject to some of the inspection laws of Title 52.

   (a) All steam vessels over 40' and under 65' in length excepting those designated under the "General" heading paragraph A.

   (b) Vessels described in general heading paragraph B.

3. Motor vessels which are subject to all of the inspection laws of Title 52.

   (a) All seagoing vessels propelled by internal combustion engines of over 300 gross tons.

   (b) All motor vessels as described under the "General" heading paragraph A.

4. Motor vessels which are subject to some of the inspection laws of Title 52 (except as noted under "General"), paragraph A.

   (a) Motor boats of over 15 gross tons and under 65' in length carrying freight or passengers for hire.

   (b) Motor vessels of over 15 gross tons and over 65' in length carrying freight or passengers for hire, excepting Section 3 paragraph A.

   (c) Vessels described in general heading paragraph B.

5. Miscellaneous vessels subject to the inspection laws of Title 52.

   (a) Seagoing barges of 100 gross tons and over.

   (b) All sailing vessels carrying passengers for hire of over 700 gross tons.

   (c) All vessels designated under the "General" heading Paragraph A.

(d) All vessels and barges of over 100 tons burden carrying passengers for hire.

6. Miscellaneous vessels subject to some of the inspection laws of Title 52.

(a) All passenger barges of 100 gross tons and under while in tow of steam vessels.

(b) Vessels described in general heading paragraph B.

7. Miscellaneous provisions.

(a) Numbering of undocumented vessels and vessels not exceeding sixteen feet in length, temporarily equipped with detachable motors. [U.S.C. Title 46, Sec. 288]

(b) Documented vessels. Name and home port on bow and stern. Application to licensed vessel. Draft marked on stem and stern posts of registered vessels. [U.S.C. Title 46, Secs. 46, 48, and 287]

(c) Sprinkler system required on passenger vessels having accommodation for 50 or more passengers. [49 Stat. 1540, U.S.C. Title 46, Sec. 464]

(d) Radio equipment and radio operators. Radio installation in charge of qualified operators required on every ship of the United States, other than a cargo ship of less than 1600 tons when navigated in the open sea outside of a harbor or port. Direction finder on certain passenger vessels. Provisions applicable to certain cargo vessels. Requirements for radio operators. (Public No. 97, 75th Cong., Act of May 20, 1937)

(e) Rules of the Road.

(1) International Rules. (U.S.C. Title 33, Secs. 61-141)

(2) Inland Rules. (U.S.C. Title 33, Secs. 151-222)

(3) Rules for the Great Lakes. (U.S.C. Title 33, Secs. 241-293)

(4) Rules for the Red River of the North and

rivers emptying into Gulf of Mexico and tributaries. (U.S.C. Title 33, Secs. 301-351)

8. "Motor Boats" as defined in Motor Boat Act of 1910, Appendix, p. 15, Government's Brief, subject to Federal Regulation and inspection in some particulars.

(a) Engine, boiler or other operating machinery of "Motor Boats" more than 40 feet in length, and not more than 65 feet in length, propelled by machinery driven by steam. (Sec. 1(a) above) (U.S.C. Title 46, Sec. 511)

(b) Lights, fog horn, whistle, bell, life preservers for each person on board and means of extinguishing fire. (U.S.C., Title 46, Secs. 512-516)

(c) Life preserver for each passenger carried. (U.S.C., Title 46, Sec. 515)

(d) Required to carry two copies of pilot rules. (Regulations, Department of Commerce.)

(e) "Motor boats shall not be required to carry licensed officers, except as required in this chapter." (June 9, 1910, c. 268, sec. 5, 36 Stat. 463; Mar. 4, 1913, c. 141, sec. 1, 37 Stat. 736; U.S.C., title 46, sec. 515)

(f) Vessels propelled by machinery other than steam more than 65 feet in length shall carry either life preservers or life belts, or buoyant cushions, or ring buoys or other device, to be prescribed by Secretary of Commerce, sufficient to sustain afloat every person on board. (U.S.C., Title 46, sec. 515)

(g) Every vessel propelled by machinery other than steam, more than 65 feet in length, shall carry ready for immediate use the means of promptly and effectively extinguishing burning gasoline. (June 9, 1910, c. 268, sec. 6, 36 Stat. 463; U.S.C., Title 46, sec. 516)

LICENSED OFFICERS AND CREW

9. On Steam Vessels Subject to Inspection.

(a) All steam vessels subject to inspection under Title 52 are required to carry such complement of licensed officers and crew, including certified lifeboat men,

as may in judgment of local inspectors be necessary for safe navigation. (R.S. 4463). This includes masters, chief mates, and second and third mates, if in charge of a watch, engineers and pilots of all steam vessels. (R.S. 4438)

(b) Vessels navigating coastwise and on Great Lakes. (R.S. 4461)

(c) Masters of all other vessels over 100 tons gross carrying passengers for hire (R.S. 4438).

(d) Citizenship of officers and pilots (49 Stat. 1935; U.S.C., Title 46, sec. 672a).

(e) Posting of licenses framed under glass in conspicuous place on vessel. (R.S. 4446)

(f) Watch duty and hours of work of deck officers. (U.S.C., Title 46, sec. 256 and sec. 673, as amended)

(g) License required for master, mates, engineers, pilots and master or mate acting as pilot. (R.S. 4439 - 4445)

(h) One person, if duly qualified, may serve in double capacity of pilot and engineer in open steam launches of ten gross tons and under. (R.S. 4426)

(i) Complement of crew and certificated lifeboat men prescribed by local inspectors. (R.S. 4463)

(j) Definition of certificated lifeboat men. (Act of Mar. 4, 1915, c. 153, sec. 14; U.S.C., Title 46, sec. 481)

(k) Requirements as to watches of crew, hours of work, duties of seamen, on all merchant vessels more than 100 tons gross, excepting those navigating rivers, harbors, lakes (other than Great Lakes), bays, sounds, bayous, and canals exclusively. Special provisions for tugs and barges on voyages of less than 600 miles. (49 Stat. 1954; June 23, 1936, c. 614, sec. 2, U.S.C., Title 46, sec. 673)

(l) Manning of vessels of 100 tons gross and upward, except those navigating rivers exclusively and the smaller inland lakes. (46 U.S.C., sec. 672; Act of June 23, 1936, c. 614, sec. 1, 49 Stat. 1930)

(m) Requirements for able seamen. Certificate of service as a qualified member of the engine department. Not less than 75 per centum of crew must be able to understand any order given by the officers of vessels referred to in (l) above. (U.S.C., Title 46, sec. 672)

(n) Continuous discharge book for every seaman upon a merchant vessel of the United States 100 gross tons and upward, except vessels employed exclusively in trade on the navigable rivers of the United States. (R.S. 4551, as amended, U.S.C., Title 46, sec. 642)

(o) Citizenship of Crews. (U.S.C., Title 46, sec. 672a)

10. On Vessels Propelled by Machinery Other than Steam.

(a) Licensed officers and crews required on all vessels under "General" heading paragraphs A and B, above.

(b) All seagoing vessels propelled by internal combustion engines over 300 gross tons. (U.S.C., Title 46, sec. 367)

(c) Engineers and pilots on vessels over 15 gross tons carrying freight or passengers for hire, but not engaged in fishing. (U.S.C., Title 46, sec. 404)

(d) Licensed operator required on vessels under 15 gross tons carrying passengers for hire. No examination for license. (U.S.C., Title 46, sec. 404)

(e) "Motor Boats" carrying passengers for hire to be in charge of person duly licensed by local board of inspectors. No examination for license required, but license shall be revoked or suspended for misconduct, etc. (Motor Boat Act, 1910, sec. 5, U.S.C., Title 46, sec. 515)

(f) "That motor boats shall not be required to carry licensed officers, except as required in this Act." (Act of June 9, 1910, c. 298, sec. 5, 36 Stat. 463; U.S.C., Title 46, sec. 515)

(g) Crew. Requirement as to watches, etc. on vessels over 100 gross tons. (See No. 9 (k) above)

(h) Manning of vessels, requirements for able seamen and qualified member of engine department. Continuous discharge book. Citizenship of crews. (See No. 9 (l), (m), (n), and (o) above)

11. Sailing Vessels.

(a) Registry, enrollment and license. (U.S.C., Title 46, Secs. 11, 251, 252, 253)

(b) License for masters of sail vessels over 700 gross tons. (U.S.C., Title 46, Sec. 224; R.S. 4438)

(c) Rules of road applicable to sailing vessels. (See No. 7(c) above.)

12. Pending Legislation: Copeland Act, S. 2580, 75th Cong., 1st Session. (Scope and present status set forth on page 10 Memorandum of the United States Amicus Curiae.)

Thorough revision of all laws pertaining to motor boats, vessels under 300 tons propelled by internal combustion engines and smaller steam vessels. (Present status set forth on page 22-1/2 - additional page - respondent's brief, documents there referred filed with the Clerk.)

No. 2

DEPARTMENT OF COMMERCE

BUREAU OF
MARINE INSPECTION AND NAVIGATION
WASHINGTON

June 22, 1936.

CIRCULAR LETTER NO. 111.

TO MEMBERS OF THE MOTORBOATING INDUSTRY,
YACHT CLUBS, AND OTHERS CONCERNED:

The present requirements of law affecting the inspection and operation of motorships and motorboats are inadequate to provide for safety on such vessels. In view of this fact, it is felt that there is a very definite and urgent need for legislation setting up certain minimum requirements as to the inspection and also as to the operating personnel of small craft as well as larger vessels.

There is enclosed herewith a memorandum setting forth the views of the Bureau of Marine Inspection and Navigation on the subject. It will be noted that no provision is made in the memorandum for licensing operators of pleasure craft. While it is felt that such a requirement is very desirable, it seems that a considerable amount of educational work must first be done in order to avoid probable opposition on the part of owners of such boats.

The Bureau will be pleased to receive from you any suggestions, criticisms, or opinions that you may desire to express on this memorandum, or any views you may hold on the subject of legislation which, in your estimation, is desirable for the furtherance of safety on motorboats.

Enclosed herewith is a franked envelope for your reply.

Director.

Enclosure.

16455

MOTOR BOAT MEMORANDUM

May 1, 1936.

REQUIREMENTS FOR THE INSPECTION OF MOTOR VESSELS AND THE EXAMINATION OF THEIR OFFICERS OR OPERATORS

The formulation of just and reasonable rules to control the operation of motor vessels may be based upon the following facts:

The safety of any vessel depends to a very great extent upon her suitability for the trade in which she operates, the adequacy of her outfit, and the condition in which she is kept. To guarantee a reasonable degree of safety, an inspection of some form should be insisted upon for all passenger vessels, and for all other commercial vessels except those of small size.

The responsibility for safe and efficient navigation is the same for all mechanically-propelled vessels. An improperly navigated motor vessel is as great a menace to others as an improperly navigated steamer. It is apparent, however, that a very large proportion of small motor vessels do not require licensed officers as provided for in the present Steamboat Inspection Rules. Many, if not most of these small vessels are being safely and efficiently operated by men who could not possibly meet the present requirements for a license, and this condition has obtained for many years. To insist upon the employment of licensed officers would be an unnecessary hardship for both owners and operators and would not increase safety of operation. To meet this situation, it is proposed that a new class of certificated deck officers or operators be established.

The main threat to safety on steam vessels is the explosion of the ordinary fire-tube or flue boiler. To guard against this, particular care and knowledge is required, so that the present examination of steam engineers is entirely justified.

On motor vessels, except those of large tonnage with donkey boilers, the above risk does not exist. A special form of examination applicable to internal combustion engines should be prepared. A knowledge of steam should not be required. For small motor vessels, "certification" similar to that proposed for deck officers should give satisfactory results and is not believed to be an unreasonable requirement.

Having in mind the foregoing conditions, the following rules applying to motor vessels, are proposed:

1. Inspection -

All motor vessels regularly carrying passengers for pay, and all other commercial vessels of over 15 tons, shall be subject to inspection as to suitability, general condition, equipment, and outfit, as required for the particular service in which they are employed. For passenger vessels, such inspection shall apply in territorial as well as home waters. (As purely a safety provision, there can be no logical objection to it) Inspection of cargo boats, tugs, fishing boats, and other similar craft of less than 15 tons shall, however, not be required.

2. Deck Officers.

A motor-driven passenger vessel, above 200 tons, shall have licensed deck officers the same as are required for steam vessels.

A motor-driven passenger vessel below 200 tons shall have a "certificated" officer or operator in charge who has satisfied the inspector as to his ability to operate the vessel safely in her particular trade and route. Written or oral examination, supplemented by evidence as to character and previous experience, shall be deemed sufficient for the issuance of a certificate, to be known as Certificate A, for deck officers of vessels of not over 200 tons.

All motor boat operators on boats carrying passengers for hire are required (Act of June 9, 1910) to have a license, granted without examination. Hereafter, no license shall be granted where the applicant, by oral examination, is found not to have at least a working knowledge of the Rules of the Road, of steering, running lights, etc. Upon satisfactory proof of the foregoing minimum requirements for safe operation, a certificate, known as Certificate B, may be granted, and required of operators of all commercial vessels, but not of operators of small yachts and pleasure boats.

3. Engineer Officers.

For motor vessels of over 200 tons, a licensed engineer officer or officers shall be required, but the examination for this license shall be a special one applicable to internal combustion engines. No knowledge of steam shall be required. For small motor vessels of less than 200 tons, a certificated engineer or operator shall be required - the certificate to be known as Certificate M. To obtain this certificate, the operator shall qualify as follows:

(a) Sufficient experience and reliability to maneuver the machinery promptly and without error.

(b) Sufficient knowledge of the machinery reasonably to assure its continuous operation.

(c) A thorough knowledge of the hazards involved in the use of liquid fuel; explosion in the case of gasoline; fire, with heavy oil, etc.

Inspectors shall determine a man's ability to fulfill these requirements by written or oral examination, backed by evidence as to character and experience. No knowledge of steam plants, or previous experience with them shall be required of operators of small motor vessels.

4. These rules, as outlined, shall apply to the various classes of vessels generally as follows:

(a) Passenger vessels -

Inspection - All to be inspected.

Deck Officer - Above 200 tons - Licensed officers.
Below 200 tons - Certificate "A".

Engineer Officers - Above 200 tons - licensed officers.
Below 200 tons - Certificate "M"

(b) Cargo Vessels - Except vessels carrying dangerous cargoes provided for under Public Act 343.

Inspection - Up to 15 tons, no inspection required.
15 tons and above, to be inspected.

Deck Officers -Up to 15 tons - certificate "B".
15 to 200 tons - certificate "A".
Above 200 tons - Licensed officer.

Engineer Officers - Up to 15 tons-no examination required.
15 to 200 tons - certificate "M".
Above 200 tons - Licensed officer.

(c) Towboats - Same as Cargo Vessels.

(d) Fishing, Seafood and Allied Vessels - Same as Cargo Vessels, except that special consideration may be given to vessels of over _____ tons.

5. Motor vessels actually operated by owner, yachts, etc.
No inspection shall be required other than that now in force as to life preservers, fire extinguishers, running lights, etc.

Attention is directed to the fact that many of these relative small vessels are over 20 tons, and many are of very high speed - 30 knots and more. In the hands of unskilled or careless operators, they are a constant menace to other craft. It is suggested that opportunity to qualify for Certificates A.B. and M be offered to the operators of these small vessels if they desire them and are found, by examination, to be duly qualified.

16455

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No. 2

61st Congress, 2d Session. | HOUSE OF REPRESENTATIVES. | Report No. 1430.

EQUIPMENT OF CERTAIN MOTOR BOATS, ETC.

JUNE 2, 1910.—Ordered to be printed.

Mr. GREENE, from the committee of conference, submitted the following

CONFERENCE REPORT.

[To accompany S. 7359.]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 7359) to amend laws for preventing collisions of vessels and to regulate equipment of certain motor boats on the navigable waters of the United States, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with amendments as follows:

Section 1, in the fourth line thereof, after the word "steam," strike out the words: "and sail vessels using auxiliary power."

In the last line of section 1, after the word "steam," strike out the words: "This act shall not apply to nonnavigable waters."

Section 3, after the word "long," at the end thereof, strike out the period and insert a colon and the following:

Provided, That motor boats, as defined in this act, when propelled by sail and machinery or under sail alone, shall carry the colored lights, suitably screened, but not the white lights prescribed by this section.

Section 5, in the first line thereof, strike out the words: "of class two or three"

In the fourth line of section 5, after the word "carry," insert the word *either*; after the word "life-preservers," insert the word *or*; after the word "belts" insert the word *or*; and in the fifth line of said section 5, after the word "buoys," insert the words: *or other device, to be prescribed by the Secretary of Commerce and Labor.*

Section 9, after the word "repealed," at the end thereof, strike out the period and insert a colon and the following:

Provided, That nothing in this act shall be deemed to alter or amend acts of Congress embodying or revising international rules for preventing collisions at sea.

WM. S. GREENE,
W. E. HUMPHREY,
J. W. ALEXANDER,
Managers on the part of the House.

J. H. GALLINGER,
GEO. C. PERKINS,
JAMES P. CLARKE,
Managers on the part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE, TO ACCOMPANY CONFERENCE REPORT ON BILL S. 7359.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 7359) to amend laws for preventing collisions of vessels and to regulate equipment of certain motor boats on the navigable waters of the United States, submit the following written statement explaining the effect of the action agreed on:

It was agreed to recommend that the Senate recede from its disagreement to the amendment of the House and agree to the same, amended as follows:

Section 1, in the fourth line thereof, after the word "steam" strike out the words: "and sail vessels using auxiliary power." Also, in the last line of section 1, after the word "steam" strike out the words: "This act shall not apply to nonnavigable waters."

Section 3, after the word "long" at the end thereof, strike out the period and insert a colon and the following: "*Provided*, That motor boats as defined in this act, when propelled by sail and machinery or under sail alone, shall carry the colored lights suitably screened but not the white lights prescribed by this section."

Section 5, in the first line thereof, strike out the words: "of class two or three."

In the fourth line of section 5, after the word "carry," insert the word "either;" after the word "life-preservers" insert the word "or;" after the word "belts" insert the word "or;" and in the fifth line of said section 5, after the word "buoys," insert the words: "or other device, to be prescribed by the Secretary of Commerce and Labor."

Section 9, after the word "repealed" at the end thereof, strike out the period and insert a colon and the following: "*Provided*, That nothing in this act shall be deemed to alter or amend acts of Congress embodying or revising international rules for preventing collisions at sea."

WM. S. GREENE,
W. E. HUMPHREY,
J. W. ALEXANDER,
Managers on the part of the House.

No. 2

61st Congress, 2d Session. } HOUSE OF REPRESENTATIVES. { Report No. 1162.

EQUIPMENT OF CERTAIN MOTOR BOATS.

April 29, 1910.—Referred to the House Calendar and ordered to be printed.

Mr. Humphrey, of Washington, from the Committee on the Merchant Marine and Fisheries, submitted the following

REPORT.

[To accompany S. 7359.]

The Committee on the Merchant Marine and Fisheries, to whom was referred the bill (S. 7359) to amend laws for preventing collisions of vessels and to regulate equipment of certain motor boats on the navigable waters of the United States, have considered the bill, and recommend that the bill be amended by striking out all after the enacting clause and substituting therefor the following:

That the words "motor boat" where used in this act shall include every vessel propelled by machinery and not more than sixty-five feet in length, except tugboats and towboats propelled by steam. The length shall be measured from end to end over the deck, excluding sheer: *Provided*, That the engine, boiler, or other operating machinery shall be subject to inspection by the local inspectors of steam vessels and to their approval of the design thereof on all said motor boats which are more than forty feet in length and which are propelled by machinery driven by steam.

Sec. 2. That motor boats subject to the provisions of this act shall be divided into classes as follows:

Class one. Less than twenty-six feet in length.

Class two. Twenty-six feet or over and less than forty feet in length.

Class three. Forty feet or over and not more than sixty-five feet in length.

Sec. 3. Every motor boat in all weathers from sunset to sunrise shall carry the following lights and during such time no other lights which may be mistaken for those prescribed shall be exhibited.

(a) Every motor boat of class one shall carry the following lights:

First. A white light aft to show all around the horizon.

Second. A combined lantern in the forepart of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(b) Every motor boat of classes two and three shall carry the following lights:

First. A bright white light in the forepart of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side. The glass or lens shall be of not less than the following dimensions:

Class two. Nineteen square inches.

Class three. Thirty-one square inches.

Second. A white light aft to show all around the horizon.

Third. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The glasses or lenses in the said side lights shall be of not less than the following dimensions on motor boats of—

Class two. Sixteen square inches.

Class three. Twenty-five square inches.

On and after July first, nineteen hundred and eleven, all glasses or lenses prescribed by paragraph (b) shall be fresnel or fluted. The said lights shall be fitted with inboard screens of sufficient height and so set as to prevent these lights from being seen across the bow, and shall be of not less than the following dimensions on motor boats of—

Class two. Eighteen inches long.

Class three. Twenty-four inches long.

SEC. 4. (a) Every motor boat under the provisions of this act shall be provided with a whistle or other sound-producing mechanical appliance capable of producing a blast of two seconds or more in duration, and in the case of such boats so provided a blast of at least two seconds shall be deemed a prolonged blast within the meaning of the law.

(b) Every motor boat of class two or three shall carry an efficient fog horn.

(c) Every motor boat of class two or three shall be provided with an efficient bell, which shall be not less than eight inches across the mouth, on board of vessels of class three.

SEC. 5. That every motor boat subject to any of the provisions of this act, and also all vessels propelled by machinery other than by steam, more than sixty-five feet in length, shall carry life-preservers, life belts, buoyant cushions, or ring buoys sufficient to sustain afloat every person on board, and so placed as to be readily accessible. All motor boats carrying passengers for hire shall carry one life-preserver of the sort prescribed by the regulations of the board of supervising inspectors for every passenger carried, and no such boat while so carrying passengers for hire shall be operated or navigated except in charge of a person duly licensed for such service by the local board of inspectors. No examination shall be required as the condition of obtaining such a license, and any such license shall be revoked or suspended by the local board of inspectors for misconduct, gross negligence, recklessness in navigation, intemperance, or violation of law on the part of the holder, and if revoked the person holding such license shall be incapable of obtaining another such license for one year from the date of revocation.

SEC. 6. That every motor boat and also every vessel propelled by machinery other than by steam, more than sixty-five feet in length, shall carry ready for immediate use the means of promptly and effectually extinguishing burning gasoline.

SEC. 7. That a fine not exceeding one hundred dollars may be imposed for any violation of this act. The motor boat shall be liable for the said penalty and may be seized and proceeded against, by way of libel, in the district court of the United States for any district within which such vessel may be found.

SEC. 8. That the Secretary of Commerce and Labor shall make such regulations as may be necessary to secure the proper execution of this act by collectors of customs and other officers of the Government. And the Secretary of the Department of Commerce and Labor may, upon application therefor, remit or mitigate any fine, penalty, or forfeiture relating to motor boats, except for failure to observe the provisions of section 6 of this act.

SEC. 9. All laws and parts of laws only in so far as they are in conflict herewith are hereby repealed.

SEC. 10. That this act shall take effect on and after thirty days after its approval.

The bill as amended in its essentials is the measure which passed the Senate on April 26, 1910, in behalf of which the Department of Commerce and Labor submitted the following report:

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, April 13, 1910.

SIR: The department has received your letter of the 24th ultimo, inclosing S. 7359, "A bill to amend laws for preventing collision of vessels and to regulate equipment of certain motor boats on the navigable waters of the United States." Complying

with your request that I furnish your committee with such suggestions as I may deem proper touching the merits of the bill and the propriety of its passage, I have to state:

The department favors the passage of the bill at the present session of Congress. It is in general accord with the following recommendation of the annual report of the Secretary of Commerce and Labor for 1909:

"Within ten years conditions of navigation have been appreciably changed by the rapid growth of the motor-boat industry. The 'rules of the road,' enacted before these boats came into general use, require in some cases useless or impossible equipment, and other laws fail to provide adequately for equipment. The laws should be adjusted to the conditions."

The international rules for preventing collisions at sea, framed in 1890 and carried into effect in 1897, contain this definition: "The words 'steam vessel' shall include any vessel propelled by machinery." The act of 1895, to prevent collisions on the Great Lakes, the St. Lawrence River and connecting waters, and the inland rules of 1897 contain the same definition. That definition has also been carried into section 4233 of the Revised Statutes governing the navigation of vessels on the Mississippi and other rivers flowing into the Gulf of Mexico, with their tributaries. The effect of this definition is to prescribe under heavy penalties the same lights and sound-signaling apparatus for small motor boats as for steamers.

At the time these rules were approved by the International Maritime Conference at Washington, and subsequently by acts of Congress, motor boats were practically unknown, though vessels were in rare cases propelled by electricity. Within the past ten years the construction and use of motor boats has enormously increased, and, while exact figures are not available, probably there are fully 100,000 such boats employed on waters within federal jurisdiction. The laws to prevent collisions of vessels, popularly known as the "rules of the road," are the most important acts of Congress for the safety of life on the water, and have the most general application. Respect for all law relating to vessels is impaired when these rules are ignored.

The Department of Commerce and Labor is reluctant for another reason to undertake to enforce laws which prescribe physical impossibilities, and in this view responsible motor-boat owners and manufacturers throughout the country concur. Tens of thousands of motor boats of considerable speed are only 15 to 18 or 20-odd feet long. The laws require them to carry a white light from 15 to 20 feet above the hull. A pole or staff of that height on so short a boat is a factor of danger, not safety, and of course ought not to be prescribed.

The green and red side lights by law must have screens 3 feet long, and to secure the statutory range of visibility, 2 miles, they must be carried at a height of 3 feet above the hull. On thousands of small motor boats compliance with this law, if possible, would assign all the forward part of the boat to the side lights.

The first section of the bill defines motor boats and establishes the simplest possible rule to ascertain length, according to which by standard sizes the second section divides them into classes.

The third section of the bill establishes a practical uniform system of lights for motor vessels which follows the principles governing such lights according to the rules of the road. The changes to be effected are shown in a synoptical table attached to this report.

A whistle is necessary on a vessel propelled by machinery to indicate to approaching vessels in clear weather her course, as well as to sound in fog. The law prescribes that the whistle under certain conditions must sound a prolonged blast of from four to six seconds. Where steam is available this prolonged blast can readily be produced. On motor boats so long a blast can be produced only by an expensive apparatus with an air chamber 5 or 6 feet long. The bill retains the whistle, but reduces the prolonged blast to two seconds.

A fog horn is the distinctive signal of the sail vessel, and is carried on steamers under the international rules, for use only if the steam whistle breaks down. It is not prescribed on our Great Lakes or the Mississippi, and under this bill will not be required on smaller motor boats on the seaboard, though it can, of course, be carried.

The bell is used only when a vessel is at anchor in a fog. Thousands of small motor boats carry no anchors and are never in a fog. The department's experience shows that these bells are often stolen. In relieving these small boats of the necessity for carrying a bell (its use remains optional) the department agrees to a diminution from the rules, but does not consider that danger will be incurred thereby. The bell and the fog horn will be required on the larger classes of motor boats as at present.

The use of gasoline as fuel on motor boats introduces a special element of danger. While prudent manufacturers and owners provide against this danger, the department believes Congress should take cognizance of it, and in this belief it has the support of the owners and builders of motor boats. There is now no law requiring [illegible]

extinguishing apparatus on any kind of motor boats, though some of them carry 100 passengers or more. Life-preservers are prescribed only for motor boats of less than 15 tons carrying passengers. Section 5 of the bill requires life-preservers, life-belts, buoyant cushions, or ring buoys on all motor boats, and section 6 prescribes that all motor boats over 25 feet long must carry, ready for immediate use, the means of promply and effectually extinguishing burning gasoline. Motor boats are of so many types and sizes, and employed for so many purposes, that the department considers that better results will be reached by the general prescriptions of sections 5 and 6 than by an attempt to particularize the kinds of apparatus required or even to require that such apparatus must first be inspected and stamped by government officers.

The department recommends four slight changes in the bill:

1. In the title the word "collision" should read "collisions," to conform to other laws.

2. At page 1, lines 10 and 11, the word "twenty-five" should be changed to "twenty-six." While 25 feet is a standard length for many small motor boats, in numerous instances they are reported to overrun this length by a few inches. Any difficulty on this score will be obviated by making the limit 26 feet, as now proposed.

3. At page 1, line 13, the word "less" should be changed to "not more," thus giving boats of just 65 feet in length—a standard length—a place in class 3.

4. At page 5, lines 17, 18, and 19, strike out the words "This section shall not be construed to amend or repeal any existing law requiring life-preservers," and substitute therefor the following: "So much of section 4426 of the Revised Statutes as amended as provides for life-preservers on vessels fifteen gross tons or less propelled in whole or in part by gas, gasoline, petroleum, naphtha, fluid, or electricity, and carrying passengers for hire is hereby repealed." By this amendment motor boats under 15 tons, carrying passengers, will be taken out of the present special rule and brought under the general rule of section 5 by which life belts, buoyant cushions, and ring buoys may be carried. A uniform rule will thus be established, which the department deems desirable.

The bill does not change existing laws except as indicated in its text. It does not change the present laws for licensed operators or officers of motor boats, the laws requiring custom-house documents in certain cases, the painting of a vessel's name, etc.

The department is aware that in the matter of the inspection of hulls and machinery, license of officers, and other particulars the laws make considerable distinction between steamboats and motor boats. It has been urged on the one hand to recommend that in this bill motor boats be subjected to many of the statutory requirements now prescribed for steam vessels. On the other hand it has been urged to recommend that steam vessels be exempted in this bill from many requirements of law not now applicable to motor boats. While much may be urged by special interests for or against either of these propositions the department is opposed to the use of this bill as a vehicle to carry such propositions into law. Such propositions may well be considered separately on their merits by Congress.

The measure as it stands is a necessity to the orderly obedience of law in which probably a million people all through the United States are concerned. The department has had extensive correspondence and conferences with motor-boat owners and manufacturers, and understands that while some would desire additional provisions in the bill, practically all are in favor of the propositions it does contain.

Respectfully,

BENJ. S. CABLE, *Acting Secretary.*

HON. WILLIAM P. FRYE,
Chairman Committee on Commerce,
United States Senate, Washington, D. C.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, April 16, 1910.

SIR: The department's letter of the 13th instant in favor of S. 7209, "A bill to amend laws for preventing collision of vessels and to regulate equipment of certain motor boats on the navigable waters of the United States," contained the following paragraph:

"At page 1, line 13, the word 'less' should be changed to 'not more,' thus giving boats of just 65 feet in length, a standard length, a place in class three." To conform to this change the following changes should also have been recommended:

Page 1, line 6, change the word "less" to "not more."

Page 5, line 11, insert the words "more than" before the words "sixty-five feet" and strike out the words "or more."

Page 5, line 23, insert the words "more than" before the words "sixty-five feet" and strike out the words "or more."

A copy of the bill with the changes recommended by the department is attached hereto.

Respectfully,

BENJ. S. CABLE,
Acting Secretary.

Hon. WILLIAM P. FRYE,
Chairman Committee on Commerce,
United States Senate, Washington, D. C.

SYNOPTICAL TABLE OF CHANGES.

Changes in lights and sound-signaling appliances prescribed by the several "Rules of the Road."

[Motor boats over 65 feet are to carry as at present the lights and sound-signaling appliances prescribed for steam vessels.]

LIGHTS.

	Proposed bill (S. 7359; H. R. 23373).	Seaboard law (act of June 7, 1897).	Great Lakes law (act of Feb. 8, 1895).	Gulf rivers law (sec. 4233, R. S.).
Boats under 26 feet long.				
White lights	One aft, showing around horizon.	Range of 2 lights; forward showing 5 miles; light aft 15 feet higher than forward and showing around horizon.	Forward showing 5 miles and 20 feet above hull.	Range of 2 lights; light aft 15 feet higher than light forward and showing around horizon.
Side light	Combined green and red lantern forward.	Starboard green and port red, each showing 2 miles, with 3-foot screens. (Vessels under 10 tons in bad weather may carry portable green and red lanterns, to be displayed on approach.)	Same as seaboard.	Same as seaboard.
Boats from 26 to 65 feet long.				
White lights	One forward at stem and one aft showing around horizon. Minimum lenses defined.	Same as white lights above.	Same as white lights above.	Same as white lights above.
Side lights	Starboard green and port red, minimum lenses defined; screens 18 to 24 inches.	Same as side lights above.	Same as side lights above.	Same as side lights above.

Changes in lights and sound-signaling appliances prescribed by the several "Rules of the Road"—Continued.

SOUND-SIGNAL APPARATUS.

	Proposed bill (S. 7359; H. R. 22073).	Seaboard law (act of June 7, 1897).	Great Lakes law (act of Feb. 8, 1895).	Gulf rivers law (sec. 4233, R. S.)
Boats under 26 feet long.				
Whistle	Efficient whistle sounding blast of 2 seconds.	Efficient whistle sounding blast of 4 to 6 seconds, sounded by steam or substitute.	Efficient whistle audible 2 miles.	Whistle 8 feet above deck.
Fog horn	None	Efficient fog horn.	None	None.
Bell	do	Efficient bell	Efficient bell	Bell.
Boats from 26 to 65 feet long.				
Whistle	As above	As above	As above	As above.
Fog horn	Efficient fog horn.	Efficient fog horn.	None	Do.
Bell	Efficient bell (8 inches in boat over 40 feet).	Same as above.	Same as above.	Same as above.

Changes in specific life-saving equipment.

	Proposed bill (S. 7359; H. R. 22073).	Existing law (sec. 4426 R. S.).
Life preservers	All motor boats, whatever their length, shall carry life-preservers, life belts, buoyant cushions, or ring buoys sufficient to sustain afloat every person on board and so placed as to be readily accessible.	All vessels of 15 gross tons or less, propelled in whole or in part by gas, gasoline, petroleum, naphtha, fluid, or electricity, and carrying passengers for hire, shall carry one life-preserver, of the sort prescribed by the regulations of the Board of Supervising Inspectors, for every passenger carried.
Fire extinguishers	All motor boats over 26 feet shall carry, ready for immediate use, the means of promptly and effectually extinguishing burning gasoline.	Nothing.

The Senate bill provides that motor boats of not more than 40 feet in length used exclusively for pleasure, propelled by steam, shall be subject to the same regulations as other motor boats.

The bill as amended provides, further, that steam vessels not more than 65 feet in length and not used for carrying passengers for hire nor as tugboats nor towboats shall not be required to carry licensed officers.

The amended bill also provides the uniform penalty of $100 for violations of the act instead of the various penalties provided in various sections of the Senate bill.

The bill recommended by your committee further prescribes that on all motor boats carrying passengers for hire life preservers must be of the sort prescribed by the Board of Supervising Inspectors. In other essentials the bills are in accord, and in view of the coming opening of the season of navigation the committee unanimously recommends the prompt passage of the bill.

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No. 2

74TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT No. 1321

INSPECTION OF MOTOR VESSELS

JUNE 25, 1935.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. BLAND, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany S. 2001]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (S. 2001) to amend section 4426 of the Revised Statutes of the United States as amended by the act of Congress approved May 16, 1906, having had the same under consideration, report it back to the House with amendments and, as so amended, recommend that the bill do pass.

The amendments proposed by the Committee are as follows:

Page 2, line 10, insert after the word "all" where it appears the second time in said line, the word "sea-going".

Page 2, line 11, change the word "fifteen" to "twenty".

Page 2, line 15, after the word "thereto" change the period to a comma and insert "but this paragraph shall not apply to vessels engaged in fishing or oystering as a regular business".

The first amendment inserts the word "sea-going" to make this law applicable to sea-going vessels and inoperative as to small craft on inland waters, concerning which the committee desires additional information, and will study later, but the legislation on larger craft is so necessary that delay is not desired. The evidence so far shows that to make this law applicable to small boats on inland waters may result in great hardships.

The second amendment changes the tonnage because the information before the committee shows that this may prove unduly burdensome on vessels under 20 tons.

The third amendment is made to exclude vessels engaged in fishing and oystering as a regular business. The proposed law was not intended to apply to this class, but only to vessels carrying freight or passengers for hire. Those engaged in fishing and oystering as a regular business expressed fear that they would be included though that

Note: Correct memorandum of the United States, Amicus Curiae in Case No. 2, October Term 1937, page 2, footnote 1, to show the 772 vessels are over 100 tons each, to accord with this report.

was not intended, and to make the exclusion clear, the amendment was adopted.

A bill similar to S. 2001 was recommended to the House committee and introduced. This bill is known as "H. R. 6037."

Hearings were held on the House bill and testimony disclosed discrimination in favor of Diesel-operated towing vessels which are subject to inspection laws to a limited extent while competitive steam vessels of the same size are subject to full inspection and regulation.

The primary object, however, of the legislation is to reach many larger vessels that should have full inspection. The situation is graphically portrayed by Mr. Tyrer, Assistant Director of the Bureau of Navigation and Steamboat Inspection, in his testimony before the committee, when he said:

> We have at the present time vessels that are operated by internal-combustion engines, of tonnages exceeding 100, there are 772 vessels of 819,935 gross tons that would come under the provision of this law.
>
> For instance, we have in the class from 5,000 to 7,500 tons 29 vessels, with a total tonnage of 179,556; and over 7,500 tons we have 33 vessels, with a total tonnage of 300,292.
>
> Those large vessels at the present time are subject to only a very limited inspection—that is, the inspection of the hulls and boilers, and are required under the law to carry a licensed engineer and a licensed pilot. The provisions of section 4472 that provides for protection against fire do not apply to our 7,500-ton vessels that are in the trans-Atlantic trade. They are not required under the law to carry a single lifeboat. There are many other provisions of the steamboat inspection laws that are of the utmost importance to safety of life that do not apply to these large transoceanic vessels. As a matter of fact, we are inspecting those vessels at the present time, but it is only because the owners of the ships accept such inspection. It is not a matter of law.

Mr. Tyrer introduced a statement of vessels not subject to such inspection and which should be brought under it. This statement is as follows:

Tonnage	Number	Total tonnage	Tonnage	Number	Total tonnage
100 to 500	556	110,652	5,000 to 7,500	29	179,566
500 to 1,000	67	45,324	Over 7,500	33	300,292
1,000 to 2,500	71	117,811			
2,500 to 5,000	16	65,290	Total	772	818,935

The committee feels that this situation should be corrected and accordingly report favorably this bill.

The bill has the favorable recommendation of the Department of Commerce as appears from the following report:

DEPARTMENT OF COMMERCE, REPORT OF THE BUREAU OF NAVIGATION AND STEAMBOAT INSPECTION

H. R. 6037, a bill to amend section 4426 of the Revised Statutes of the United States, as amended by the act of Congress approved May 16, 1906.

This proposed bill is to amend section 4426 of the Revised Statutes as amended by the act of Congress approved May 16, 1906.

When title LII covering the steamboat-inspection laws was passed, internal-combustion engines were practically unknown, with the result that a very large portion of the existing law applies to steam vessels and under the opinions of the law officers of this Department, does not apply to vessels operated by machinery other than steam. For example, it is very doubtful whether under existing law, we can require lifeboats on motor vessels regardless of their size or trade.

The provisions of section 4472 Revised Statutes applying to safeguards against the carrying of inflammable or dangerous articles, applies only to steam vessels. There are many other provisions in the steamboat laws that are equally inapplicable to motor-driven boats.

We have at present 215 internal-combustion engine vessels of 703,828 gross tons over which the Steamboat Inspection Service has limited jurisdiction. It is the custom to inspect those vessels and require proper equipment, but, in some respects, this is by courtesy and not by authority of law.

The enactment of this bill would involve additional expenditures by the Bureau of $50,000 annually, including $46,500 for 15 additional inspectors and $3,500 for their travel.

It will be noted in the Ramseyer rule, which follows, that the provisions requiring motor boats of 15 gross tons or less, transporting passengers for hire, to carry a life preserver for each passenger carried and to be navigated only by a person duly licensed by the local board of steamboat inspectors, are repealed by this bill.

This repeal is made because a later act of Congress known as the "Motor Boat Law of June 9, 1910", not only takes care of the situation covered by the second paragraph of Revised Statutes 4426, but extends the supervision of the Steamboat Inspection Service over the safety requirements for motor vessels by requiring all motor boats carrying passengers for hire to carry a life preserver for each passenger on board and to be navigated by a person duly licensed by the local board of steamboat inspectors.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, section 4426 of the Revised Statutes of the United States, as amended by the act of Congress approved May 16, 1906, is herewith set out, the changes proposed by this bill being shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; and existing law in which no change is proposed is shown in roman):

SEC. 4426. The hull and boilers of every ferryboat, canal boat, yacht, or other small craft of like character propelled by steam, shall be inspected under the provisions of this title. Such other provisions of law for the better security of life as may be applicable to such vessel shall, by the regulations of the board of supervising inspectors, also be required to be complied with before a certificate of inspection shall be granted, and no such vessel shall be navigated without a licensed engineer and a licensed pilot: *Provided, however*, That in open steam launches of ten gross tons and under, one person, if duly qualified, may serve in the double capacity of pilot and engineer. [All vessels of above fifteen gross tons carrying freight or passengers for hire, but not engaged in fishing as a regular business, propelled by gas, fluid, naphtha, or electric motors, shall be, and are hereby, made subject to all the provisions of section 4426 of the Revised Statutes of the United States relating to the inspection of hulls and boilers and requiring engineers and pilots, and for any violation of the provisions of this title applicable to such vessels, or of rules or regulations lawfully established thereunder, and to the extent to which such provisions of law and regulations are so applicable, the said vessels, their masters, officers, and owners shall be subject to the provisions of sections 4496, 4497, 4498, 4499, and 4500, relating to the imposition and enforcement of penalties and the enforcement of law.

All vessels of fifteen gross tons or less propelled in whole or in part by gas, gasoline, petroleum, naphtha, fluid, or electricity, and carrying passengers for hire, shall carry one life preserver, of the sort prescribed by the regulations of the board of supervising inspectors, for every passenger carried, and no such boat while so carrying passengers shall be operated or navigated except in charge of a person duly licensed for such service by the local board of inspectors. No examination shall be required as a condition of the obtaining of such a license, and any such license shall be revoked or suspended by the local board of inspectors for mis-

conduct, gross negligence, recklessness in navigation, intemperance, or violation of law on the part of the holder, and, if revoked, the person holding such license shall be incapable of obtaining another such license for one year from the date of revocation.]

That from and after three months after the date of the approval of this Act, all towing vessels, and all sea-going vessels of above twenty gross tons propelled by machinery, the propulsion power of which is other than by steam, carrying freight or passengers for hire, shall be subject to all of the provisions of the laws relating to steam vessels, insofar as they may be applicable thereto, but this paragraph shall not apply to vessels engaged in fishing or oystering as a regular business.

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No. 2

74TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 2505

INSPECTION OF VESSELS PROPELLED BY INTERNAL-COMBUSTION ENGINES

APRIL 28, 1936.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. BLAND, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H. R. 12419]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H. R. 12419) to apply laws covering steam vessels to seagoing vessels of 300 gross tons and over propelled by internal-combustion engines, having had the same under consideration, report it back to the House without amendment and recommend that the bill do pass.

The purpose of the bill is to make existing laws covering the inspections of steam vessels applicable to seagoing vessels of 300 gross tons and over propelled by internal-combusion engines to such extent and upon such conditions as may be required by the regulations of the Board of Supervising Inspectors of Steam Vessels, with the approval of the Secretary of Commerce.

The provisos except fishing vessels and vessels in the Hawaiian waters. Vessels engaged in the fisheries have been exempted since the beginning of their use. Many of these vessels are operated by their owners and members of their families and, as a rule, they are operated by men trained to the sea and well-informed as to what equipment they should carry for their own safety.

The exemption as to Hawaiian waters applies to the peculiar conditions existing there.

At hearings held by your committee on safety legislation, it was pointed out by Mr. Tyrer, Assistant Director of the Bureau of Navigation and Steamboat Inspection, that at the present time we have 29 vessels in the class from 5,000 to 7,500 tons, with a tonnage

of 179,556 tons and 33 vessels over 7,500 tons with a total tonnage of 300,292.

Mr. Tyrer said:

> Those large vessels at the present time are subject to only a very limited inspection—that is, the inspection of the hulls and boilers—and are required under the law to carry a licensed engineer and a licensed pilot. The provisions of section 4472 that provides for protection against fire do not apply to vessels over 7,500 tons that are in the trans-Atlantic trade. They are not required under the law to carry a single lifeboat. There are many other provisions of the steamboat inspection laws that are of the utmost importance to safety of life that do not apply to these large transoceanic vessels. As a matter of fact, we are inspecting these vessels at the present time, but it is only because the owners of the ships accept such inspection. It is not a matter of law.

The situation which has been described is due to the fact that when the steamboat-inspection laws were passed, internal-combustion-engine laws were unknown, with the result that many of the existing laws apply to steam vessels and under the opinion of the law officers of the department, do not apply to vessels operated by machinery other than by steam. It was said that it was very doubtful whether under existing law lifeboats could be required on these motor vessels.

Under section 4426, Revised Statutes, all motor-propelled vessels of above 15 gross tons, carrying freight and passengers; for hire, but not engaged in fishing as a regular business, are made subject to all the provisions of that section relating to the inspection of hulls and boilers and requiring engineers and pilots. Under the same section, all vessels of 15 gross tons or less, propelled in whole or in part by gas, gasoline, petroleum, naphtha, fluid, or electricity, and carrying passengers for hire, are required to carry one life preserver of the sort prescribed by the regulations of the Board of Supervising Inspectors for every passenger carried, and no such boat while so carrying passengers shall be operated or navigated except in charge of a person duly licensed for such service by the local board of inspectors. These licenses may be revoked or suspended for misconduct, gross negligence, recklessness in navigation, intemperance, or violation of law on the part of the holder, and, if revoked, the person holding such license shall be incapable of obtaining another such license for 1 year from the date of revocation.

The motorboat law, approved June 9, 1910, applies to every vessel propelled by machinery and not more than 65 feet in length, except tugboats and towboats propelled by steam.

Under section 5 of the motorboat law all vessels propelled by machinery other than by steam, more than 65 feet in length, shall carry either life preservers, or life belts, or buoyant cushions, or ring buoys, or other device, to be prescribed by the Secretary of Commerce, sufficient to sustain afloat every person on board and so placed as to be readily accessible.

The Bureau of Navigation and Steamboat Inspection is working on plans for conferences during this year at which there will be considered a thorough revision of all laws pertaining to motorboats, vessels under 300 tons propelled by internal-combustion engines, and the smaller steam vessels. These plans contemplate licensed certificated officers, engineers, and will take under consideration all boats on inland waters

and the high seas. It is expected that as a result of their studies, additional legislation will be submitted at the next session of Congress.

The proposed legislation does not repeal any existing laws but supplements them in cases represented by the Bureau of Navigation and Steamboat Inspection as important to be taken care of at this time.

Seagoing vessels are defined with reference to section 2 of chapter 102, of act of 1895, as amended, under which the Secretary of Commerce may from time to time designate and define by suitable bearings or ranges with lighthouses, light vessels, buoys, or coastal objects, the lines dividing the high seas from rivers, harbors, and inland waters.

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No. 2

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Calendar No. 2323

74TH CONGRESS, 2d Session | SENATE | REPORT No. 2212

INSPECTION OF VESSELS PROPELLED BY INTERNAL-COMBUSTION ENGINES

JUNE 1 (calendar day, JUNE 3), 1936.—Ordered to be printed

Mr. FLETCHER, from the Committee on Commerce, submitted the following

REPORT

[To accompany H. R. 12419]

The Committee on Commerce, to whom was referred the bill (H. R. 12419) to apply laws covering steam vessels to seagoing vessels of 300 gross tons and over propelled by internal-combustion engines, having considered the same, report thereon with an amendment and, as so amended, recommend that the bill do pass, the amendment referred to therein having been incorporated in the bill as reported.

The House report follows:

For House Report No. 2505 see photostatic copy thereof submitted herewith

SUPREME COURT OF THE UNITED STATES.

No. 2.—October Term, 1937.

E. Pat Kelly, as Director of the Department of Labor and Industries of the State of Washington, et al., Petitioners,
vs.
State of Washington on the relation of Foss Company, Inc.

On Writ of Certiorari to the Supreme Court of the State of Washington.

[November 8, 1937.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Respondents, owners of motor-driven tugs, sought a writ of prohibition to prevent the enforcement of provisions of Chapter 200 of the Washington Laws of 1907 (Rem. Rev. Stat., secs 9843 *et seq.*) relating to the inspection and regulation of vessels. The Supreme Court of the State directed judgment for respondents, holding the statute invalid "if applied to the navigable waters over which the Federal Government has control". 186 Wash. 589, 596. We granted certiorari. 299 U. S. 539. After hearing, we ordered reargument and requested the Attorney General of the United States to present the views of the Government upon the question whether the state act or the action of the officers of the State thereunder conflicts with the authority of the United States or with the action of its officers under the acts of Congress. The case has been reargued accordingly and the views of the Government have been presented both orally and upon brief in support of the decision of the state court.

The material facts, as set forth in the opinion of the state court, are that respondents own and operate one hundred and thirty-nine motor-driven tugs of which one hundred and eleven are less than sixty-five feet in length. Some of these tugs are registered and the remainder are enrolled and licensed under federal laws. For the most part these tugs are employed in intrastate commerce, but some tow to and from British Columbia ports or across the

Columbia River or from other ports in Washington to ports in Oregon. Practically all these tugs are capable of engaging in interstate or foreign commerce and will do so if and when opportunity offers. Some of the larger tugs have towed and will tow to California ports. The main business, however, of most of the tugs is confined to moving vessels engaged in interstate and foreign commerce and other work in and about the harbors where they are stationed. 186 Wash. p. 590.

Respondents' complaint challenged the validity of a large number of requirements of the state act which it was alleged the state authorities sought to enforce (186 Wash. p. 591), but these authorities by their answer and in the argument at bar disclaim an intention to enforce any of the state regulations which conflict with those established under the laws of the United States.

First.—The first question is whether the state legislation as applied to respondents' motor-driven tugs is in all respects in conflict with express provisions of the federal laws and regulations. Wherever such conflict exists, the state legislation must fall. *Gibbons* v. *Ogden,* 9 Wheat. 1, 210.

Chapter 200 of the Washington Laws of 1907 is described by the state court as "a comprehensive and complete code for the inspection and regulation of every vessel operated by machinery which is not subject to inspection under the laws of the United States". Rem. Rev. Stat., sec. 9844; 186 Wash. p. 590. It cannot be doubted that the power of Congress over interstate and foreign commerce embraces the authority to make regulations for respondents' tugs. *Foster* v. *Davenport,* 22 How. 244; *Moran* v. *New Orleans,* 112 U. S. 69; *Harman* v. *Chicago,* 147 U. S. 396. Has Congress exercised that authority and, if so, to what extent?

The federal acts and regulations with respect to vessels on the navigable waters of the United States are elaborate. They were well described in the argument of the Assistant Solicitor General as a maze of regulation. Provisions with respect to steam vessels are extremely detailed. 46 U. S. C., chap. 14, secs. 361 *et seq.* Provisions as to motor-driven vessels are far less comprehensive and establish only a limited regulation. By Section 4426 of the Revised Statutes, as amended by the Act of March 3, 1905, c. 1457, 33 Stat. 1029, 1030, and by the Act of May 16, 1906, c. 2460, 34 Stat. 193, 194, it was provided that all vessels "above fifteen gross

tons carrying freight or passengers for hire, but not engaged in fishing as a regular business, propelled by gas, fluid, naptha, or electric motors", should be subject to the provisions of the statute relating to the inspection of hulls and boilers and requiring engineers and pilots. These vessels were also required to carry life preservers for passengers and, while carrying passengers, to be in charge of a person duly licensed by the federal local board. 46 U. S. C. 404. It does not appear that respondents' motor-driven tugs are within the class of vessels which carry freight or passengers for hire.

In 1910, Congress enacted the Motor Boat Act. 36 Stat. 462. While this statute is applicable to respondents' tugs, so far as it goes, its scope is restricted. Section 1 defines the word "motor boat" as including "every vessel propelled by machinery and not more than sixty-five feet in length except tugboats and towboats propelled by steam". There follows in that section a proviso that the engine, boiler or other operating machinery shall be subject to inspection by the local inspectors of steam vessels, and to the approval of the design thereof, where the vessels "are more than forty feet in length and are propelled by machinery driven by steam". Section 2 divides the motor boats which are subject to the Act into three classes; (1) those less than twenty-six feet in length; (2) those twenty-six feet or over and less than forty feet in length; (3) those forty feet or over and not more than sixty-five feet in length. Section 3 then provides for the carrying of lights by motor boats of the respective classes. Section 4 relates to whistles, fog horns and bells. Sections 5 and 6 provide that motor boats subject to the Act, and also motor boats more than sixty-five feet in length, shall carry life preservers or life belts or similar devices and fire extinguishing equipment. Section 5 requires that all motor boats carrying passengers for hire shall be in charge of a person duly licensed by the federal local board of Inspectors, and has the proviso that motor boats shall not be required to carry licensed officers except as required by the Motor Boat Act. 46 U. S. C. 511-518. Under the federal regulations, motor boats are required to have on board two copies of the pilot rules to be observed by them, with copies of the departmental circular.

As documented vessels of the United States, motor boats must be marked in a specified manner with their names and home ports. 46 U. S. C. 46. All vessels, regardless of tonnage, size, or manner

of propulsion, and whether or not carrying freight or passengers for hire (other than public vessels of the United States not engaged in commercial service), which have on board "any inflammable or combustible liquid cargo in bulk", are to be "considered steam vessels" and are made subject to the provisions of the statutes relating to such vessels. This provision does not apply to inflammable or combustible liquid for use as fuel or stores. Act of June 23, 1936, c. 729, 49 Stat. 1889; 46 U. S. C. 391a. Vessels transporting explosives or like dangerous cargo are subject to inspection to determine that such cargo may be carried with safety, and appropriate permit for that purpose is required. Act of August 26, 1935, c. 697, 49 Stat. 868, 46 U. S. C. 178. "Load lines" are established for merchant vessels of one hundred and fifty gross tons or over proceeding on a "coastwise voyage by sea", as defined, that is, outside the line dividing inland waters from the high seas. Act of August 27, 1935, c. 747, 49 Stat. 888, 46 U. S. C. 88. Compare International Load Line Convention of July 5, 1930, 47 Stat. 2229. It appears from statements in the record and in argument, which we do not understand to be challenged, that there are not more than three of respondents' motor tugs, here involved, which exceed one hundred and fifty tons gross.

The limited application of the provisions of the federal laws and regulations to vessels propelled by internal-combustion engines was recently and definitely brought to the attention of Congress. The report of the Bureau of Navigation and Steamboat Inspection showed that there were many large vessels of this class.[1] The Com-

[1] Report (June 25, 1935) of the Committee on Merchant Marine and Fisheries of the House of Representatives on "Inspection of Motor Vessels". H. R. Rep. No. 1321, 74th Cong., 1st sess. Reference was made to the situation as described by the Assistant Director of the Bureau of Navigation and Steamboat Inspection as follows:

"We have at the present time vessels that are operated by internal-combustion engines, of tonnages exceeding 100, there are 772 vessels of 819,935 gross tons that would come under the provision of this law [the proposed bill].

"For instance, we have in the class from 5,000 to 7,500 tons 29 vessels, with a total tonnage of 179,556; and over 7,500 tons we have 33 vessels, with a total tonnage of 300,292.

"Those large vessels at the present time are subject to only a very limited inspection—that is, the inspection of the hulls and boilers, and are required under the law to carry a licensed engineer and a licensed pilot. The provisions of section 4472 that provides for protection against fire do not apply to our 7,500-ton vessels that are in the trans-Atlantic trade. They are not required under the law to carry a single lifeboat. There are many other provisions of the steamboat inspection laws that are of the utmost importance to safety of life that do not apply to these large transoceanic vessels. As a matter of fact, we are inspecting those vessels at the present time, but it is only because the owners of the ships accept such inspection. It is not a matter of law".

mittee on Merchant Marine and Fisheries of the House of Representatives found that this situation was due to the fact "that when the steamboat inspection laws were passed, internal-combustion-engine laws were unknown, with the result that many of the existing laws apply to steam vessels and under the opinion of the law officers of the department, do not apply to vessels operated by machinery other than by steam". The Committee added that "it was very doubtful whether under existing law lifeboats could be required on these motor vessels".[2] To meet that situation Congress has provided that existing laws covering the inspections of steam vessels shall be applicable "to seagoing vessels of three hundred gross tons and over propelled in whole or in part by internal-combustion engines" to such extent as may be required by the regulations of the Board of Supervising Inspectors of Steam Vessels with the approval of the Secretary of Commerce. Act of June 20, 1936, c. 628, 49 Stat. 1544, 46 U. S. C. 367. Even as thus limited, the Act expressly excepts vessels engaged "in fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industry". It is manifest that Congress carefully considered the application of existing laws and decided to what extent its field of regulation should be widened.[3] Congress decided to extend its regulation as to motor-driven vessels only to those of the specified class.

We find the conclusion inescapable that, apart from the particular requirements in other respects, there is no provision of the federal laws and regulations for the inspection of the hull and machinery of respondents' motor-driven tugs in order to insure safety or determine seaworthiness, where these tugs respectively do not carry freight or passengers for hire, or do not have on board any inflammable or combustible liquid cargo in bulk, or do not transport explosives or like dangerous cargo, or are not seagoing vessels of three hundred gross tons or over, or, with respect to requirements as to load lines, are under one hundred and fifty gross tons. It follows that inspection of the hull and machinery of these tugs by state authorities in order to insure safety and determine seaworthiness is not in conflict with any express provision of the federal laws and regulations. The testimony in the record shows that

[2] H. R. Rep. No. 2505, 74th Cong., 2d sess.

[3] *Id.*

those laws and regulations are administered in accordance with this view.

Second.—The next question is whether the federal statutes are to be construed as implying a prohibition of inspection by state authorities of hull and machinery to insure safety and determine seaworthiness in the case of vessels which in this respect lie outside the federal requirements.

The state court took the view that Congress had occupied the field and that no room was left for state action in relation to vessels plying on navigable waters within the control of the federal government. 186 Wash. pp. 593, 596. And this is the argument pressed by respondents and the Solicitor General.

This argument, invoking a familiar principle, would be unnecessary and inapposite if there were a direct conflict with an express regulation of Congress acting within its province. The argument presupposes the absence of a conflict of that character. The argument is also unnecessary and inapposite if the subject is one demanding uniformity of regulation so that state action is altogether inadmissible in the absence of federal action. In that class of cases the Constitution itself occupies the field even if there is no federal legislation. The argument is appropriately addressed to those cases where States may act in the absence of federal action but where there has been federal action governing the same subject. *Prigg* v. *Pennsylvania*, 16 Pet. 539, 617, 618; *Northern Pacific Railway Co.* v. *Washington*, 222 U. S. 370, 379; *Erie Railroad Co.* v. *New York*, 233 U. S. 671, 681, 682; *Southern Railway Co.* v. *Railroad Commission*, 236 U. S. 439, 446, 447; *Oregon-Washington R. & N. Co.* v. *Washington*, 270 U. S. 87, 101, 102; *Napier* v. *Atlantic Coast Line R. R. Co.*, 272 U. S. 581, 612, 613; *Gilvary* v. *Cuyahoga Valley Rwy. Co.*, 292 U. S. 57, 60, 61.

Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. *Minnesota Rate Cases*, 230 U. S. 352, 402. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule

which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot "be reconciled or consistently stand together". *Sinnot* v. *Davenport,* 22 How. 227, 243; *Missouri, Kansas & Texas Rwy. Co.* v. *Haber,* 169 U. S. 613, 623, 624; *Reid* v. *Colorado,* 187 U. S. 137, 148; *Crossman* v. *Lurman,* 192 U. S. 189, 199, 200; *Asbell* v. *Kansas,* 209 U. S. 251, 257, 258; *Missouri Pacific Rwy. Co.* v. *Larabee Mills,* 211 U. S. 612, 623; *Savage* v. *Jones,* 225 U. S. 501, 533; *Atlantic Coast Line* v. *Georgia,* 234 U. S. 280, 293, 294; *Carey* v. *South Dakota,* 250 U. S. 118, 122; *Atchison, T. & S. F. Rwy. Co.* v. *Railroad Commission,* 283 U. S. 380, 392, 393; *Mintz* v. *Baldwin,* 289 U. S. 346, 350. *Gilvary* v. *Cuyahoga Valley Rwy. Co., supra.*

A few illustrations will suffice. In *Reid* v. *Colorado, supra,* the question arose with respect to a statute of Colorado aimed at the prevention of the introduction into the State of diseased animals. One who had been convicted of its violation contended that the subject of the transportation of cattle by one State to another had been so far covered by the federal statute, known as the Animal Industry Act (23 Stat. 31), that no enactment by the State upon that subject was permissible. While the congressional act did deal with the subject of the driving or transporting of diseased livestock from one State into another, Congress had gone no further than to make it an offense against the United States for one *knowingly* to take or send from one State to another livestock affected with infectious or communicable disease. The Court concluded that the state statute, requiring a certificate that the cattle were free from disease, irrespective of the shipper's knowledge of the actual condition of the cattle, did not cover the same ground as the Act of Congress and was not inconsistent with it. *Id.,* pp. 149, 150. The principle was thus emphatically stated: "It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested.

This court has said—and the principle has often been reaffirmed—that, 'in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together' ".

In *Savage* v. *Jones, supra,* the Court held that a statute of Indiana regulating the sale, and requiring a statement of the formula of ingredients, of concentrated commercial food for stock was not repugnant to the federal Food and Drugs Act of 1906 (34 Stat. 768). A citizen of Minnesota sought to restrain the enforcement of the Indiana statute with respect to stock food sold and transported in interstate commerce. The federal act dealt with the subject of adulterated and misbranded foods and defined misbranding. It covered any false or misleading statements as to ingredients but did not require a disclosure of the ingredients. The State statute dealt with that omitted matter. We found that the state requirements could be sustained without impairing the operation of the federal act as to the matters with which that act dealt. We said: "But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State".

In *Mintz* v. *Baldwin, supra,* the question related to the validity of the requirement of a New York statute that cattle brought into that State for dairy or breeding purposes, and also the herds from which they came, should be certified to be free from Bang's disease by the chief sanitary official of the State of origin. One of the contentions was that the statute conflicted with the federal statute known as the Cattle Contagious Disease Act of 1903. 32 Stat. 791. To enable the Secretary of Agriculture to prevent the spread of disease among cattle and other livestock, he was authorized to establish regulations concerning interstate transportation from any place where he had reason to believe that diseases existed. When an inspector of the Bureau of Animal Industry certified that he had inspected cattle and had found them free from communicable

disease, they were permitted to be transported "without further inspection, or the exaction of fees of any kind, except such as may at any time be ordered or exacted by the Secretary of Agriculture". But the express exclusion of state inspection extended only to cases where there had been federal inspection and a certificate issued. Accordingly we held that it could not be extended to the case before the Court where the cattle had not been inspected and certified by federal authority. We said: "The purpose of Congress to supersede or exclude state action against the ravages of the disease is not lightly to be inferred. The intention so to do must definitely and clearly appear".

The application of the principle is strongly fortified where the State exercises its power to protect the lives and the health of its people. But the principle is not limited to cases of that description. It extends to exertions of state power directed to more general purposes. Thus it was applied in sustaining the order of a state commission requiring interstate carriers to construct a union passenger station as against the contention that Congress had occupied the field—in view of the broad sweep of the Act conferring authority upon the Interstate Commission to deal with the operation of interstate railroads—as it was found that Congress had not authorized the commission to meet the public need in the particular matter in question. *Atchison, T. & S. F. Rwy. Co.* v. *Railroad Commission, supra,* p. 391.

In the instant case, in relation to the inspection of the hull and machinery of respondents' tugs, the state law touches that which the federal laws and regulations have left untouched. There is plainly no inconsistency with the federal provisions. It would hardly be asserted that when Congress set up its elaborate regulations as to steam vessels, it deprived the State of the exercise of its protective power as to vessels not propelled by steam. The fact that the federal regulations were numerous and elaborate does not extend them beyond the boundary they established. When Congress took up the regulation of vessels otherwise propelled it applied its requirements to vessels of a described tonnage which carried freight or passengers for hire. When Congress a few years later passed the Motor-Boat Act, it did not attempt to deal with the subject comprehensively but laid down rules in a few particulars of a definitely restricted range. And when, in 1936, Congress

again addressed itself to the subject, it did not purport to occupy the entire field but confined its regulation to seagoing vessels of three hundred gross tons and over. It would be difficult to find a series of statutes in which the intention of Congress to circumscribe its regulation and to occupy a field limited by definite description is more clearly manifested.

When the State is seeking to prevent the operation of unsafe and unseaworthy vessels in going to and from its ports, it is exercising a protective power akin to that which enables the State to exclude diseased persons, animals and plants. These are not proper subjects of commerce and an unsafe and unseaworthy vessel is not a proper instrumentality of commerce. When the State is seeking to protect a vital interest, we have always been slow to find that the inaction of Congress has shorn the State of the power which it would otherwise possess. And we are unable to conclude that so far as concerns the inspection of the hull and machinery of these vessels of respondents in order to insure safety and seaworthiness, the federal laws and regulations, which as we have found are not expressly applicable, carry any implied prohibition of state action.

Much is made of the fact that the state law remained unenforced for a long period. But it did not become inoperative for that reason. Where the state police power exists, it is not lost by nonexercise but remains to be exerted as local exigencies may demand.

Third.—The remaining question is whether the state law must fall in its entirety, not because of inconsistency with federal action, but because the subject is one as to which uniformity of regulation is required and hence, whether or not Congress has acted, the State is without authority. *Cooley* v. *Board of Wardens,* 12 How. 299, 319; *Minnesota Rate Cases,* 230 U. S. 352, 399, 400.

The state law is a comprehensive code. While it excepts vessels which are subject to inspection under the laws of the United States, it has provisions which may be deemed to fall within the class of regulations which Congress alone can provide. For example, Congress may establish standards and designs for the structure and equipment of vessels, and may prescribe rules for their operation, which could not properly be left to the diverse action of the States. The State of Washington might prescribe standards, designs, equipment and rules of one sort, Oregon another, Cali-

fornia another, and so on. But it does not follow that in all respects the state act must fail.

We have found that in relation to the inspection of the hull and machinery of these tugs, in order to insure safety and seaworthiness, there is a field in which the state law could operate without conflict with present federal laws. Is that a subject which necessarily and in all aspects requires uniformity of regulation and as to which the State cannot act at all, although Congress has not acted? We hold that it is not. A vessel which is actually unsafe and unseaworthy in the primary and commonly understood sense is not within the protection of that principle. The State may treat it as it may treat a diseased animal or unwholesome food. In such a matter, the State may protect its people without waiting for federal action providing the state action does not come into conflict with federal rules. If, however, the State goes further and attempts to impose particular standards as to structure, design, equipment and operation which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule. Whether the State in a particular matter goes too far must be left to be determined when the precise question arises.

We have mentioned the inspection of hull and machinery of respondents' vessels in order to insure safety and seaworthiness. There may be other requirements of the state act which also lie outside the bounds of the federal action thus far taken and as to which uniformity of regulation is not needed. That question cannot be satisfactorily determined on this record and must also remain for decision as it may be presented in the future in connection with some particular action taken by the state authorities. Our conclusion is that the state act has a permissible field of operation in relation to respondents' tugs and that the state court was in error in holding the act completely unenforceable in deference to federal law. The judgment of the state court to that effect is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.